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SUBJECT: NEXUS TO WITHDRAW OBSTACLES TO SNO

REFTEL: PRETORIA 3943

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1. (SBU) SUMMARY. A telecommunications consultant to Nexus Connexion, the empowerment shareholder in South Africa's second national/network operator (SNO), said that Nexus would remove its legal challenges to the SNO by the end of 2004 and have a license to operate by February 2005. Nexus is withdrawing its litigation for the following reasons: First, an agreement with the Minister of Communications provides Nexus and its lawyers with three weeks' notice prior to her implementing the SNO license; Second, Nexus is satisfied that bids by qualified investors for the SNO's remaining unallocated equity will prevent Two Consortium and CommuniTel from controlling the SNO; and Third, an SNO shareholder agreement prevents Two Consortium or CommuniTel from putting in place lucrative contracts for themselves. END SUMMARY.

2. (SBU) A telecommunications consultant to Nexus Connexion, the empowerment shareholder in South Africa's second national/network operator (SNO), told Econoff that Nexus has withdrawn one court interdict standing in the way of licensing the SNO and would soon set aside the other. This would pave the way for a shareholding agreement between the SNO partners, which is required before the Independent Communications Authority of South Africa (ICASA) can issue a license. The consultant said Nexus anticipates finalizing a shareholding agreement before the end of the year and expects to have a license before February 2005 when the telecommunications industry will be liberalized.

3. (SBU) This contrasts sharply with Nexus' response following a September pronouncement by the Minister of Communications approving a license for the SNO. At that time, Nexus said it would not drop its first interdict calling for a judicial review of the Minister's decision to grant 25 percent of the SNO to CommuniTel and Two Consortium, despite a recommendation from the regulator to the contrary. Nexus had also filed a second interdict to prevent the Minister from implementing her decision to license the SNO.

NEXUS INTERDICT 2

4. (SBU) In late October 2004, Minister of Communications Ivy Matsepe-Casaburri agreed to provide Nexus and its lawyers with three weeks' notice, should she decide to go ahead with implementing the SNO license. According to the Nexus consultant, Nexus subsequently withdrew its interdict on this issue, secure in the knowledge that three weeks would be sufficient to refile the interdict should they wish.

NEXUS INTERDICT 1

5. (U) Nexus' first legal challenge was more complex. In December 2003, the Minister awarded a 26 percent share in the SNO to Two Consortium and CommuniTel, just months after ICASA had determined that neither was qualified for the equity stake. Shortly thereafter, Nexus filed an interdict calling for a judicial review of the Minister's decision.

6. (SBU) In an effort to break the SNO deadlock, Casaburri announced on August 27, 2004, that she was reducing the combined holdings of CommuniTel and Two Consortium from 26 percent to 25 percent in the SNO's 51 percent equity stake (SepCo). The remaining SepCo shares would be reserved for a yet-to-be-named financial investor. The consultant said that Nexus was unsatisfied with this arrangement because it left CommuniTel and Two Consortium in a position to control SepCo, and ultimately the SNO, until an investor was found.

17. (SBU) The consultant said that Nexus' concerns were resolved when the Minister revealed on October 20 that Old Mutual Asset Managers and TATA Africa Holding (Pty) Ltd. had submitted Expressions of Interest for the 26 percent unallocated equity of the SNO. The imminent allocation of the remaining SepCo shares means that neither Two Consortium nor CommuniTel would be able to control the SNO, which has been Nexus' concern all along.

18. (SBU) The consultant said that while Nexus favors TATA Africa Holding, it would not object to either of the equity bidders. He said Nexus was satisfied that both bidders bring the desired experience and capital to the SNO. Among other things, the bidders were required to have net assets of at least R5 billion, experience in telecommunications, the ability to arrange funding of more than R5 billion, and a willingness to hold its shares for at least five years.

19. (SBU) Finally, the consultant said that Nexus' concerns were further alleviated in an agreement with the other SNO shareholders to limit shareholder seats on the Board of Directors to 49 percent, prohibit any shareholder from providing a management contract to the SNO, and require unanimous approval among the SNO shareholders on all supply contracts. These last two provisions effectively put in place obstacles to any future attempt by shareholders to obtain lucrative contracts for themselves.

FRAZER